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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 NIAGARA BOTTLING, LLC, a
Delaware limited liability company,

12 Plaintiff,

13 vs.

14 ESSENCE WATER, INC., a California
Corporation,

15 Defendant.
16

Case No. 8:17-cv-1438

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Date Action Filed:
Trial Date:

17 Plaintiff NIAGARA BOTTLING, LLC (“Niagara”) as its complaint against
18 Defendant ESSENCE WATER, INC. (“Essence”) alleges as follows:

19 **NATURE OF THE CASE**

20 1. This action arises under 35 U.S.C. § 271 for Essence’s infringement of
21 Niagara’s United States Patent No. 6,572,902 (“the ‘902 Patent”).

22 **THE PARTIES**

23 2. Plaintiff Niagara is a Delaware limited liability company with its
24 principal place of business at 2560 East Philadelphia Street, Ontario, California
25 91761.

26 3. On information and belief, Defendant Essence is a corporation licensed
27 to do business in California, with a primary place of business at 12802 Knott Street,
28 Garden Grove, California, 92841.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338(a) (action arising under an Act of Congress relating to patents) and 28 U.S.C. § 1331 (federal question).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C. § 1391(c).

6. Personal jurisdiction over Essence exists because Essence is a business licensed to do business in California, having a primary place of business in Garden Grove, California in this Judicial District. Personal jurisdiction over Essence also exists because Essence sells and has sold and/or offers to sell in this judicial district products that infringe the patent-in-suit.

GENERAL ALLEGATIONS

7. On June 3, 2003, United States Patent No. 6,572,902, entitled “Process for Producing Improved Alkaline Drinking Water and the Product Produced Thereby” (“the ‘902 Patent”), was duly and legally issued by the United States Patent and Trademark Office (“USPTO”).

8. By assignment dated September 12, 2014, Niagara is the owner of all rights, title, and interest in and to the ‘902 Patent, including all rights to recover for any and all past infringement thereof. A true and correct copy of the ‘902 Patent is attached hereto as **Exhibit A**.

9. Claim 12 of the ‘902 Patent is representative of the invention claimed in the ‘902 Patent. That claim reads in full:

An improved alkaline drinking water product, comprising:
potable water which has been filtered and purified, with a total dissolved solids of less than 10 parts per million, to which has been added selected alkaline minerals, and which has then been

1 electrolyzed to produce alkaline water having a pH in the range
 2 of 9-10, with a TDS (total dissolved solids) of 22-240 ppm and
 3 an alkalinity of 12-216 ppm.

4 10. As further stated in the '902 Patent, a drinking water having the
 5 claimed properties is known to have certain health benefits. (See, e.g., '902 Patent
 6 at 1:14-30.)

7 **FIRST CAUSE OF ACTION**

8 **(Infringement of the '902 Patent)**

9 11. Plaintiff re-alleges and incorporates the allegations of the preceding
 10 paragraphs as if fully set forth herein.

11 12. Defendant Essence makes and sells the Essence pH10 drinking water
 12 product ("Essence Product"), which is advertised by Essence as being purified,
 13 having added alkaline minerals, and having a pH of 10.

14 13. Essence manufactures, sells, and offers to sell the Essence Product,
 15 which meets each and every element of at least one claim of the '902 Patent. The
 16 infringing acts take place throughout the United States, including in this Judicial
 17 District. Essence has infringed and are infringing the '902 Patent, and will continue
 18 to do unless enjoined by this Court. Attached hereto as **Exhibit B** is a collection of
 19 advertisements from Essence's website showing the Essence Product and Essence's
 20 claims regarding the product.

21 14. On September 28, 2015, Plaintiff sent a letter informing Essence that it
 22 is selling products that are believed to infringe on the claims of the '902 Patent.
 23 Despite Essence's knowledge of the '902 Patent, Essence continued to infringe the
 24 '902 Patent. Defendant Essence's infringement of the '902 Patent has been and will
 25 continue to be willful, wanton and deliberate with full knowledge and awareness of
 26 Niagara's patent rights unless enjoined by this Court.

27 15. Niagara has been damaged in an amount to be determined at trial, but
 28 in an amount no less than a reasonable royalty. Niagara is also being irreparably

1 injured by Essence's infringing activities. Niagara will continue to be so damaged
2 and irreparably injured unless such infringing activities are enjoined by this Court.

3 **PRAYER**

4 WHEREFORE, Plaintiff Niagara prays for the following relief:

5 a. Preliminary and permanent injunctions pursuant to 35 U.S.C. § 283
6 enjoining and restraining Defendant, its officers, directors, agents, employees,
7 successors and assigns, and all those acting in privity or concert with Defendant,
8 from further infringement of the '902 Patent;

9 b. A judgment by the Court that Defendant has infringed and is infringing
10 the '902 Patent;

11 c. An award of damages for infringement of the '902 Patent, together with
12 prejudgment interest and costs, said damages to be trebled by reason of the
13 intentional and willful nature of Defendant's infringement, as provided by 35 U.S.C.
14 § 284;

15 d. An award of Niagara's reasonable attorneys' fees pursuant to 35 U.S.C.
16 § 285 in that this is an exceptional case;

17 e. Niagara's costs of suit herein; and

18 f. For such other and further relief as this Court deems just and proper.

19
20 Dated: August 21, 2017

RUTAN & TUCKER, LLP
BENJAMIN DEMING
HANI SAYED

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22
23 By: /s/ Benjamin Deming
Benjamin Deming
24 Attorneys for Plaintiff NIAGARA
25 BOTTLING, LLC.
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DEMAND FOR JURY TRIAL

Plaintiff NIAGARA BOTTLING, LLC demands a jury trial on all issues triable to a jury in this matter.

Dated: August 21, 2017

RUTAN & TUCKER, LLP
BENJAMIN DEMING
HANI SAYED

By: /s/ Benjamin Deming
Benjamin Deming
Attorneys for Plaintiff NIAGARA
BOTTLING, LLC.